



Vista, Open Access and Net Neutrality

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I supported the U.S. Justice Department's antitrust case against Microsoft, because I thought the evidence of its anticompetitive behavior was compelling. But I always opposed remedies that would turn Microsoft into a public utility and subject it to common carrier regulation. This is precisely what would happen if the Windows platform becomes subject to an "open access" requirement of the sort that some applications providers and antitrust enforcers now seem to want in the context of security software. It is hard to envision anything that could be worse for innovation in this critical, technically complex sector of the economy.

In order to improve security, Microsoft has integrated anti-virus and anti-spyware software into its new Vista operating system and closed off access to the "kernel" of the operating system. Independent security firms, including industry leaders McAfee and Symantec, have complained that Microsoft's actions discriminate against them, and that ultimately computer security will suffer. In response, the company recently announced that it had made changes in Vista to (in the words of the U.S. edition of the *Wall Street Journal*) "appease foreign regulators." But, the question remains: is this good public policy? The answer is "no", because consumers will likely be harmed. Microsoft has no interest in making life difficult for independent security firms if doing so entails sacrificing security for its customers.

Platform providers such as Microsoft – whether or not they are monopolists – want to increase the value of their platforms to consumers. This is how they can sell more and charge more. The value of Microsoft's operating system platform will be higher with an innovative, efficiently operating security software market that provides the best security solutions to its customers. This may well involve what Microsoft wants to do – integrating at least some security into the operating system and making the kernel less vulnerable.

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Although it is contrary to popular perceptions, Microsoft doesn't really have anything to gain by leveraging its monopoly (it still has at least a 90-percent share of the desktop operating system market) into adjacent markets. As is by now well-known to economists, there is only one monopoly profit to be gained in a vertical chain of production (this is the "one monopoly-profit theory").

All of this is very nicely explained in a 2003 article in the *Harvard Journal of Law and Technology* by Berkeley Economics Professor Joseph Farrell and University of Colorado Law Professor Philip Weiser (both former high officials at the U.S. Department of Justice's Antitrust Division). Their analysis shows "that even a monopolist has incentives to provide access to its platform when it is efficient to do so, and to deny such access only when access is inefficient." "[T]he platform monopolist cannot increase its overall profit by monopolizing the applications market, because it could always have charged consumers a higher platform price in the first place; it has no incentive to take profits or inefficiently hamper or exclude rivals in the applications market because it can appropriate the benefits of cheap and attractive applications in its pricing of the platform. To the contrary...a platform monopolist has an incentive to innovate and push for improvements in its system – including better applications – in order to profit from a more valuable platform."

There are some exceptions to this rule, as Farrell and Weiser note. The most important in this situation is when the complementary application could eventually challenge the platform monopolist's dominance. This was the issue with Netscape's web browser in the U.S. antitrust case. Ultimately, the courts concluded that Microsoft viewed Netscape as a direct competitive threat to Windows and that its actions against Netscape were anticompetitive. But security software does not seem to present an analogous situation. If the antitrust authorities believe that security software does constitute an exception to the rule, they should bear the burden of showing that Microsoft's actions are anticompetitive and would harm consumers.

Finally, I would note that the issues in dispute between Microsoft and the independent security firms are essentially the same as those in the broadband "net neutrality" debate. The independent security firms want mandated open access to the Windows platform. Similarly, some applications and content providers want net neutrality – mandated open access to the broadband infrastructure. Microsoft is in favor of net neutrality for broadband, but, not surprisingly, opposed to open access to its major asset, the Windows platform. But, if the best policy is to leave Vista security solutions to Microsoft's discretion – relying on the fact that it has a strong incentive to make such decisions in its customers' best interest – we should, for the same reasons, do the same with broadband providers.